IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5141 OF 1992

Sampati Govind Bhil, since deceased through his legal heirs and representatives
1. Utreshwar Sampati Bhil
Indian Citizen, Major
2. Parmeshwar Sampati Bhil
Indian Citizen, Major
3. Smt. Kashibai Sampati Bhil
Indian Citizen, Major
4. Smt. Gandharibai Sampati Bhil
Indian Citizen, Major
All resident of Lavhe,
Taluka Madha, Dist: Solapur ..Petitioners

versus

Sudam Bapu Warik
Indian Citizen, Major
Resident of Lavhe, Taluka Madha
Dist: Solapur ..Respondent

Mr. Prafulla Shah for the Petitioners.
Mr. A. M. Kulkarni for the Respondent.

CORAM : D. G. DESHPANDE, J.
DATE : 10TH OCTOBER, 2006

ORAL ORDER :

1. Heard learned counsel for the Petitioners and the Respondent.

2. The petitioners are the tenants and respondent is the landlord i.e. with reference to the Bombay Tenancy and Agricultural Lands Act, 1948

(hereinafter referred to as the "Tenancy Act"). Proceedings were initiated before the Additional Tahsildar and ALT, Madha under Section 32G of the Tenancy Act. By an order dated 26.9.1972 the Additional Tahsildar and A.L.T. Madha, fixed the price of the land in favour of the tenant. The landlord preferred appeal before the Sub Divisional Officer. The Appeal was dismissed. The landlord then went to Maharashtra Revenue Tribunal, Pune, by filing Revision. The Revision application was allowed and orders of both the courts below were set aside. It appears that the tenant again filed a Review Petition before the MRT, but the same was dismissed, and hence this petition.

3. Landlord Sudam was minor on 1.4.1957. He became major in 1960 and according to the landlord, the tenant did not exercise his right within one year as per Section 32(1) 4 and therefore the tenant was entitled to purchase the land.

4. Mr. Shah for the tenant contended that original tenant Govind Bhil on 4.9.1956 had expressed his desire to buy the suit land and the same intention was expressed by him in his

subsequent statement dated 12.8.1963. At that time admittedly the landlord was minor. This statement of the tenant should be considered and ought to have been considered sufficient compliance with the provisions of Section 32F of the Tenancy Act and there was no necessity to give any kind of notice. MRT in paragraph 8 has held that as per the School Leaving Certificate the date of birth of the landlord was 26.5.1942 and he attained majority on 26.5.1960. Therefore, landlord attained the majority prior to the Amendment Act 49 of 1969, and therefore he was not under any obligation to give any notice or intimation of having attained majority to the tenant. But inspite of that the tenant did not sent any intimation about his intention to purchase the suit land, and, therefore, according to MRT there was failure of the tenant to comply with the provisions of Section 32F.

5. Mr. Shah relied upon the judgment in the case of **Bapu Dnyanu Patil vs. Sadashiv Ramchandra Joshi in Special Civil Application Nos. 1159 of 1965 and 517 and 2008 of 1968 decided on 8.10.1968.** The citation of this judgment cannot be given from the copy of the judgment given by Mr. Shah. It

appears that this judgment is taken from Manupatra Information Solutions Pvt. Ltd. In that case constitutional validity of Section 32F was in question before the court and constitutional validity was upheld by the bench.

6. The second judgment relied upon by Mr. Shah is reported in **1972 BCI(O) 65 Vishnu Shantaram Desai vs. Indira Anant Patkar and Anr.** Paragraph 26 appears to be material. The same is reproduced herein below:

> **"Consequences of failure on the part of a tenant to give intimation of his desire to purchase land within the time specified or in the manner prescribed by Section 32-F are provided in Section 32-P. That section inter alia states that where a tenant files to exercise the right to purchase the land held by him within the specified period under Section 32-F, the Tribunal may after holding a formal enquiry direct that the land shall be disposed of in the manner provided in sub-section (2). The cumulative effect of the provisions of Section 32-F read with those of Section 32 - P is that in a case where a landlord or a tenant or both of them are under disability a tenant shall be deemed to be a purchaser of the land held by him as a tenant only if he gives an intimation of his desire to purchase land to the landlord and the Tribunal in the manner prescribed and within the time specified in Section 32-F."**

7. The third judgment that was relied upon by

Mr. Shah was reported in **1986 Mh.L.J. 709 Mohan Gajanan Deshpande vs. Dhondiram Hari Chavan and others**. In this case it was held :

> **"Held, that there is nothing in the wording of sections 32F(1)(a) and section 32F (1A) as amended by Maharashtra Act 49 of 1969 to show that they are retrospective in operation. There is also nothing in the Amending Act to draw such an inference. If the two amendments are harmoniously construed together, the plain result is that the obligation under the amended provision of Section 32F(1)(a) is cast on only those landlords who attain majority on or after 17th October 1969. In order to protect tenants who had no means to know the date on which the landlords had already attained majority prior to 17th October 1969, the proviso to sub section (1A) gave them a breather of 2 years to ascertain the correct position and take effective steps for being declared statutory purchasers provided of course they had managed to retain possession with them as on 17th October 1979. The landlord was under no obligation prior to the amendment by Act 49 of 1969 to give intimation of his having attained majority to the tenants. The tenant on his turn could not press in aid the concession enuring to him under the proviso to section 32F(1A). The Agricultural Lands Tribunal was right in declaring the purchase ineffective. The orders passed by the M.R.T., and appellate authority were liable to be set aside."**

8. Mr. Kulkarni, Counsel for the respondent relied upon the judgment delivered by me and reported in **1999 Vol. 101(3) Bom. L.R. 213 Maruti Narayan Chavan since deceased by his heirs and L.Rs. vs Shri Ramchandra Bhau Sutar, since deceased by his**

heirs and ors. and **my unreported judgment in Writ Petition No. 4796 of 1992 dated Vithu Rama Kaingade, since deceased by his heirs and legal representatives Nivrutti Vithu Kaingade & ors. vs. Sharad Dhondo Kulkarni.**

9. Mr. Kulkarni also relied upon the judgment reported in **(1995)5 Supreme Court cases 243 Anna Bhau Magdum, since deceased by his legal representatives vs. Babasaheb Anandrao Desai**, wherein it was held that the requirement to give notice is mandatory. Tenants failure to give notice within the prescribed period would disentitle him to purchase the land.

10. As stated above Mr. Kulkarni relied upon my reported judgment in Maruti Narayan Chavan's case and unreported judgment, as referred above, wherein after considering the relevant provisions, it has been held by me that the provisions of giving notice are mandatory and no inference of giving intimation can be drawn from any statement made in the earlier proceedings.

11. In view of the matter, the order of the MRT cannot be faulted with. There is no merit in this

petition. Petition is dismissed. Rule is discharged. Order of the MRT is maintained as it is.

(D.G. DESHPANDE, J.)